



January 9, 2012

***Ex Parte Notice***

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

***Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Universal Contribution Methodology, WC Docket No. 06-122; Federal-State Joint Board on Universal Service, CC Docket No. 96-45***

Dear Ms. Dortch:

On Friday, January 6, 2012, Jill Canfield and the undersigned on behalf of the National Telecommunications Cooperative Association (“NTCA”) held separate meetings to discuss matters in the above-referenced proceedings with: (1) Christine Kurth, Policy Director and Wireline Counsel to Commissioner McDowell; and (2) Sharon Gillett, Carol Matthey, Rebekah Goodheart, Patrick Halley, and Vickie Robinson of the Wireline Competition Bureau. Specifically, we presented the attached materials in each meeting and discussed the need for prompt and effective reform of the contributions mechanism that enables the federal universal service fund (“USF”).

***There are Good Policy Reasons to Rely Upon Revenues to Expand the Contribution Base***

As explained further in the attached materials, a revenues-based contributions mechanism is technologically neutral and best captures the value that consumers place on competing services that use underlying networks without regard to the specific technology used to deliver the service. It reflects the balance that consumers strike between different service offerings and the evolution of consumer preference. It is the most equitable means of sharing responsibility across network users, as compared to other means that would allow entire categories of service providers who rely heavily upon the network to capture the benefits of such use without paying their “fair share” to support the ubiquitous availability of that network. Finally, NTCA noted that a revenues-based contributions mechanism can be implemented quickly with little burden to providers or the industry (since billing systems are already designed for revenues-based assessments), and that an expanded revenues-based mechanism would stabilize the contributions system. By contrast, the Federal Communications Commission (the “Commission”) should refrain from attempting to create a complex new contributions system from whole cloth (such as one based upon numbers or connections), as this would either result in stalemate in the reform debate or create new and unforeseen pressures and loopholes that undermine the reform effort if adopted.

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**The Commission Has Ample Authority to Expand the Contribution Base to Incorporate Certain Service Revenues**

The Commission has ample authority to expand the list of assessable services to include revenues from services delivered by providers of “telecommunications,” including Internet access providers. “Broadband Internet access providers” include any provider that offers any broadband Internet access service for sale to an end user. If the Commission can distribute USF support to enable the deployment of broadband-capable networks fund pursuant to Section 254(c) (which refers expressly to “telecommunications services”) and Section 254(e) (which refers to “facilities and services for which the support is intended”),<sup>1</sup> Section 254(d) provides an even more straightforward route to require USF contributions based upon retail broadband Internet access revenues.

Section 254(d) confers permissive authority to require any provider of interstate “telecommunications” to contribute. A telecommunications transmission component is an element of any integrated broadband Internet access service offering. As the Commission found with respect to Interconnected VoIP providers in 2006,<sup>2</sup> broadband providers “provide” telecommunications by including such inputs as a component of the larger, integrated product. In that order, the Commission determined that interconnected VoIP service was telecommunications, but did not resolve whether the service was information service or telecommunications service, effectively concluding that it did not matter.<sup>3</sup> Using the same rationale, even if retail broadband Internet access service were an information service, it may (and should) be subject to universal service contributions.<sup>4</sup> Indeed, it is also worth noting that many rural local exchange carriers, who have operated pursuant to the “no barriers” policy since the Commission’s reclassification of wireline broadband Internet access earlier in the last decade, already contribute to USF based upon the revenues received from the sale of broadband-capable telecommunications pursuant to federal tariff.<sup>5</sup> Thus, in many cases, rural

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<sup>1</sup> *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-91; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking (rel. Nov. 18, 2011), at ¶¶ 61-65.

<sup>2</sup> *Second Contribution Methodology Order*, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 21 FCC Rcd 7518 (2006).

<sup>3</sup> *Id.* at 7537.

<sup>4</sup> The Commission’s construction of section 254(d) was upheld in *Vonage Holdings Corporation v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007).

<sup>5</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order and Order on Reconsideration, 18 FCC Rcd 15090 (2003).

consumers are today paying *more* to support universal service than other consumers, because these rural consumers effectively already *are* contributing to USF based upon the procurement of broadband services today.

The Commission also has ancillary authority to assess contributions on revenues associated with broadband Internet access services. The preservation and advancement of USF is clearly laid out as a statutory mandate. Prior to Section 254 becoming law, the United States Court of Appeals for the District of Columbia Circuit confirmed that the Commission could use Title I and Section 1 in the first place to create a universal service program.<sup>6</sup> The Court, looking to the language of Section 1 of the Communications Act, held that “[a]s the Universal Service Fund was proposed in order to further the objective of making communication service available to all Americans at reasonable charges, the proposal was within the Commission’s statutory authority.”<sup>7</sup> Given that the Commission has indicated that retooling the USF program to support broadband-capable networks is among its most significant policy priorities, it would be both self-defeating and ironically anomalous for the Commission to build a broadband-focused fund of tomorrow on a foundation comprised solely of legacy services that fewer and fewer customers are buying.

NTCA also supports assessing revenues derived from non-interconnected VoIP services. The question with respect to assessment of such services is merely a definitional one, rather than a jurisdictional one. The current rule defining interconnected VoIP illogically results in assessment for those services that offer the ability to place and receive calls.<sup>8</sup> This definition makes little sense, however, in the context of a USF program that seeks to support the networks upon which traffic rides. On a “per session” basis, the fact that data may be flowing in one direction or two (or the fact that a session could only be initiated from or received by a given station) is irrelevant to the burden placed on the network by the session as it occurs or the benefit derived by the user. Such disparity also promotes regulatory gamesmanship, where providers can structure functionally equivalent offerings to evade contributions obligations.

NTCA expressed support too for clarification that revenues derived from texting are subject to assessment for USF contribution purposes. As discussed in prior comments filed by NTCA,<sup>9</sup> texting is increasingly a substitute for voice calls from wireless devices, and it makes the same essential use of the underlying network as such communications. As those prior comments explained, the Commission therefore has both a sound policy basis and clear legal authority to confirm that texting services are subject to revenue assessment for purposes of USF contributions.

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<sup>6</sup> *Rural Telephone Coalition v. FCC*, 838 F.2d 1307 (D.C. Cir 1988).

<sup>7</sup> *Id.* at 1315.

<sup>8</sup> 47 C.F.R. § 9.3.

<sup>9</sup> Comments of NTCA, WC Docket No. 06-122 (filed June 6, 2011).

Finally, NTCA continues to suggest that the Commission study further how to address business models that rely heavily upon driving traffic from others to specific websites or web-based enterprises. Expanding the base to include broadband Internet access revenues within the contribution base could conceivably capture many of the network costs arising out of such business models, to the extent that these enterprises buy broadband Internet access services to receive traffic.<sup>10</sup> To the extent that some of these enterprises instead “peer” for the exchange of their traffic, however, there could be little or no revenues to assess in connection with the delivery of traffic. NTCA therefore believes the Commission should investigate further how enterprises that rely heavily upon driving Internet traffic – but do not pay for either telecommunications or broadband Internet access services in doing so – can be made to pay a fair share to support the networks that in turn support their business models. The Commission should *not*, however, put off any reform at all in the hope of crafting a solution to this longer-term question. To the contrary, it is far more advisable to take steps to shore up the existing system through sensible, achievable reforms now, narrow the open questions for subsequent resolution, *and to then* turn to solving those outstanding questions.

Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS with your office. The materials provided during the meetings referenced herein are provided herewith. If you have any questions, please do not hesitate to contact me at (703) 351-2016 or [mromano@ntca.org](mailto:mromano@ntca.org).

Sincerely,

/s/ Michael R. Romano  
Michael R. Romano

Senior Vice President - Policy

Enclosure

cc: Christine Kurth  
Sharon Gillett  
Carol Matthey  
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Vickie Robinson

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<sup>10</sup> Presumably, providers already contribute today to the extent they sell telecommunications services to such enterprises based upon the revenues received from such sales. But under today’s system, a provider of broadband Internet access service to such firms would not be required to contribute based upon those sales.



# USF Contribution Supply and Demand: *Fiction and Facts*

January 2012

# USF Contribution % Continues to Rise

- This is an issue that warrants a meaningful solution.
- But it's important too to keep this in perspective and solve the right problems.
  - The Contribution Factor is largely applied to interstate and international long distance service charges – only a few \$ per month for most consumers.
- Meaningful solutions must address Supply & Demand:
  - Reasonable Ways to Improve the Contribution Mechanisms
    - Broaden the Base
  - Target those Issues that are Placing Pressure on the USF
    - Look Closely at where Growth Has and Will Come From

# How Did This Happen?

## Supply Fiction and Facts

- Fiction: *The Contribution Factor is rising simply because the total size of the USF has increased.*
- Fact: The Contribution Base is declining and things will get much worse absent Contribution reform.
  - Over the past 2 years, assessable Telecommunications Revenues declined by \$2 Billion.
  - Continuing to stake USF Supply to a declining Contribution Base jeopardizes all aspects of Universal Service.
  - It also implicates the principles of sufficiency and predictability
    - Under such circumstances, policy decisions are made based not on the “job to be done” but rather on “what squeezes into the budget?”
  - **The USF is being starved.**

# How Did This Happen?

## Demand Fiction and Facts

- Fiction: *The Contribution Factor is rising because of “waste, fraud, and abuse” by allegedly inefficient recipients of high-cost support.*
- Fact: Frequent audits of Rural ILECs confirm that waste, fraud, or abuse is not a concern.
- Fact: Rural ILEC demand on and use of USF has been relatively stable and very efficient.
  - Rural ILECs’ total draw on USF increased by only 3% CAGR between 2006 and 2010.\*
  - Meanwhile, from 2000 to 2010, rural ILEC broadband penetration (DSL or above) increased from a small percentage to over 92%, with adoption averaging 51%.\*



# How Did This Happen?

## Demand Fiction and Facts (cont.)

- Fiction: *Even if it's not due to inefficiency or abuse, the increase in the Contribution Factor must be due to ever-increasing demand for high-cost USF support.*
- Fact: Over the course of 2011 –
  - High-Cost Support declined slightly (-\$9M).
    - \$1.122B in 1Q 2011 to expected \$1.113B in 4Q 2011.
  - Rural Health Care Support declined slightly (-\$2M).
    - \$24M in 1Q 2011 to expected \$22M in 4Q 2011.
  - Schools and Libraries Support was flat (at \$559M per Q).
  - Low-Income Support increased by 41% (+\$154M).
    - \$373M in 1Q 2011 to expected \$527M in 4Q 2011.

# How Did This Happen?

## Demand Fiction and Facts (cont.)

- Facts: From 2005 to 2010 –
  - Low-Income Support increased by 116% (+\$709M)
    - From \$607M to \$1.316B
    - On \$2B+ run-rate now and where does it stop?
  - CETCs received 8.45% of Low-Income Support in 2005, and 54.65% of Low-Income Support in 2010
    - CETCs have received more than 2/3 of Low-Income Support so far in 2011
    - Are we seeing a new run on USF, much like “Identical Support”?
- It is far past time to ask – where are controls on growth/demand really needed?

# Fixing USF Supply

- Focusing on the Facts Shows That:
  - The shrinking Contribution Base must be fixed or all of Universal Service is at risk.
  - The FCC can dramatically improve the Supply equation by expanding the Contribution Base:
    - Fixed & Mobile Retail Broadband Internet Access Revenues – Est. \$39B Market in 2010; projected to be \$49B in 2012.\*
    - Texting Revenues – Est. \$20B Billion Market\*
    - Non-Interconnected (1-way) VoIP Service Revenues
    - Will still need to consider separately how to ensure that web-based enterprises that place substantial burdens on networks contribute directly or indirectly to USF and help sustain those networks.

## Fixing USF Supply (cont.)

- The FCC Has Ample Authority and Good Policy Reasons to Expand the Contribution Base:
  - Section 254(d) permits assessment on any provider of interstate telecommunications.
  - Broadband should support USF as it will be enabled by USF.
    - Adding \$49 Billion in Broadband Revenues to the Contribution Base would enable substantial reductions in the Contribution Factor, equitably distribute the responsibility of supporting universal service, and enable reasonable growth to “do the job” of Universal Service.
  - Non-interconnected VoIP and Texting cannot function without supported networks, and should thus contribute.
    - 2-Way VoIP contributes today – it makes no sense that these other communications streams do not.
    - VoIP and texting are increasingly substitutes for traditional voice services.
    - Another \$20B+ in the Contribution Base
  - If Estimated Broadband and Texting Revenues Had Been in the Contribution Base in 4Q2011, Contribution Factor Could Have Been Cut in Half (7.7% Rather than 15.3%).

# Fixing USF Demand

- Focusing on the Facts Shows That:
  - Look where pressure on the USF has really come from, rather than responding or resorting to rhetoric.
  - The FCC can address issues in the Demand equation by being prudent in near-term reform:
    - Get exploding growth under control where it really is occurring.
    - Consider whether rapid increases are justified, and what measures are required to address that growth. *See, e.g.,* GAO Report 11-11.

## Conclusion

- It is Essential to Focus on Facts and not Fiction in Addressing Contribution Reform.
- The FCC Should Identify and Remedy Existing Pressures on the USF, rather than Creating New Pressures or Allowing Existing Pressures to Fester.
- Policy-makers Should Make Fixes Based Upon the Facts:
  - Achieve the Art of the Possible Rather than Delaying Solutions
  - Expand the Contribution Base – Stop Starving USF
  - Move Past the Rhetoric and Constrain Growth Where Growth is Really Occurring